

AMENDED IN ASSEMBLY MARCH 20, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1655

Introduced by Assembly Member Dickinson

February 13, 2012

An act to amend Section 19635 of, and to add Chapter 10.4 (commencing with Section 3524.1) to Division 4 of Title 1 of, the Government Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1655, as amended, Dickinson. Public employees: rights.

The existing Bill of Rights for State Excluded Employees prescribes various rights and terms and conditions of employment for excluded employees, defined as certain supervisory, managerial, and confidential state employees.

This bill would enact the Public Employees' Bill of Rights Act that would apply to state employees other than excluded employees. The stated purpose of this act would be to inform public employees of their rights and terms of employment in order to promote harmonious personnel relations between public employees and their employers. This bill would, among other things, provide that state employees shall be entitled to priority over ~~excluded employees or~~ contractors in filling permanent, overtime, and on-call positions. This bill would also *prescribe certain rights for employees who are required to maintain a professional license and would authorize the formation of a peer review committees for committee for those licensed professionals, if there are no management or supervisory professional staff employed by the employer*, to provide input regarding workplace operations.

Existing law requires notice of any adverse action against any state employee for any cause for discipline based on any civil service law to be served within 3 years after the cause for discipline, upon which the notice is based, first arose. Existing law provides that an adverse action based on fraud, embezzlement, or the falsification of records is valid if notice of the adverse action is served within 3 years after the discovery of the fraud, embezzlement, or falsification.

This bill would require notice of the adverse action to be served and the investigation to be completed within one year after *discovery of the cause for discipline* ~~first arose~~ in order for an adverse action to be valid against any state employee for any cause for discipline based on any civil service law of this state. *The bill also would provide that an adverse action based on fraud, embezzlement, or the falsification of records is valid if notice of the adverse action is signed within one year after the discovery of the fraud, embezzlement, or falsification.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 10.4 (commencing with Section 3524.1)
2 is added to Division 4 of Title 1 of the Government Code, to read:

3
4 CHAPTER 10.4. PUBLIC EMPLOYEES' BILL OF RIGHTS ACT

5
6 3524.1. This chapter shall be known as the Public Employees'
7 Bill of Rights Act.

8 3524.2. The Legislature hereby finds and declares that the
9 rights and protections provided to public employees under this
10 chapter constitute a matter of important concern. The Legislature
11 further finds and declares that the efficient and effective
12 administration of public programs depends upon the maintenance
13 of high morale and the objective consideration of issues between
14 public employees and their employer.

15 3524.3. The purpose of this chapter is to inform public
16 employees of their rights and terms of employment, and to inspire
17 dedicated service and promote harmonious personnel relations
18 between public employees and their employer.

19 3524.4. For purposes of this chapter:

1 (a) "Contractor" means any person, other than a civil service
2 employee, who contracts to perform services for a state agency.

3 (b) "Employee" means a civil service employee, other than an
4 excluded employee, of the State of California.

5 (c) "Employer" includes all state agencies, boards, and
6 commissions as may be designated by law that employ civil service
7 employees, with the exception of the University of California.

8 (d) "Excluded employee" means any of those employees
9 described in subdivision (b) of Section 3527.

10 (e) "Professional employee" means an employee described in
11 Section 3521.5.

12 3524.5. (a) The employer shall provide to each employee at
13 the onset of his or her employment and at reasonable intervals, a
14 current, detailed, and accurate job description, including a complete
15 description of the scope of his or her duties, salary, and benefits
16 information.

17 (b) The work of the employee shall not be standardized in
18 relation to a given period of time, and unreasonable quotas shall
19 not be imposed on an employee.

20 (c) The employer shall not unreasonably prevent the employee
21 from using his or her daily rest and lunch periods as well as his or
22 her annual, vacation, sick, or other earned leaves. An employee
23 shall be paid a salary proportionate to the time base he or she is
24 scheduled to work.

25 (d) An employee shall not be compelled to perform extra work,
26 including work caused by vacancies, furloughs, or layoffs, without
27 fair compensation.

28 (e) An employee shall enjoy priority in filling permanent,
29 overtime, and on-call positions over ~~excluded employees and~~
30 contractors.

31 3524.6. Each employee shall have the right to a safe and healthy
32 working environment. Grievances relating to this right shall be
33 given a priority status.

34 3524.7. (a) Neither the employer, nor any of its excluded
35 employees or contractors, shall unlawfully discriminate against
36 an employee on the basis of age, sex, race, religion, creed, color,
37 national origin, ancestry, marital status, physical handicap, or
38 sexual orientation.

39 (b) There shall be no reprisals for any employee actions
40 involving exercise of rights under this section, in addition to the

1 protections afforded in the Ralph C. Dills Act (Chapter 10.3
2 (commencing with Section 3512)) and the California
3 Whistleblower Protection Act (Chapter 6.5 (commencing with
4 Section 8547) of Division 1 of Title 2). Employees shall be
5 provided with a confidential hotline to report waste, abuse of
6 authority, and violation of law or threat to public safety.

7 (c) An employee shall have the right to sue the employer for
8 damages for violations of the *federal* Americans with Disabilities
9 Act, the federal Age Discrimination in Employment Act, the federal
10 Family and Medical Leave Act, the California Family Rights Act,
11 and the federal Fair Labor Standards Act.

12 3524.8. (a) An employee is entitled to be fairly and
13 progressively disciplined for any deficient or inappropriate
14 behavior or job performance. The employer shall ensure that
15 preventive and corrective actions are taken before any adverse
16 action is administered in accordance with the current “Guide to
17 Employee Conduct and Discipline,” or any successor publication,
18 distributed by the Department of Personnel Administration.

19 (b) Employers shall adhere to strict due process and periodic
20 written notice procedures while investigating employees. Those
21 investigations shall not ordinarily exceed the timeframe contained
22 in the original notice.

23 3524.9. The employer shall honor the memorandum of
24 understanding (MOU) under which each employee is covered. The
25 employee is entitled to receive timely responses from the employer
26 in all areas covered by the MOU, especially in response to
27 complaints and grievances. Any grievance filed by an employee
28 shall be considered to have been resolved in favor of the employee
29 if any of the contractual timelines are violated by the employer.

30 3524.10. (a) This section shall apply to an employee who is
31 required to maintain a professional license to perform his or her
32 work.

33 (b) An employee’s professional judgment related to his or her
34 work and work product shall not be interfered with and shall not
35 be infringed upon by nonprofessional or unlicensed employees or
36 supervisors. An employee shall not be required to perform work
37 that could put his or her professional license in jeopardy.

38 (c) Performance and merit evaluations shall include significant
39 input from a management or supervisory peer who has the same

1 or a higher professional status or license, as applicable, as that held
2 by the employee.

3 (d) If there are no *management or supervisory* professional staff
4 employed by the employer, a peer review committee shall be
5 formed and authorized to have regular input regarding the operation
6 of the workplace.

7 (e) Professional staff and the respective bylaws of the
8 professional staff shall be recognized by the employer. Professional
9 staff shall have regular input regarding the operation of the
10 workplace.

11 (f) Professional employees named in lawsuits as codefendants
12 along with the employer and the state shall have the right to
13 representation. These employees shall enjoy all the same rights
14 afforded to all legal clients, including the right to be informed of
15 a settlement by the state. If there is a conflict of interest between
16 the employee and the state as codefendants, the state shall provide
17 independent counsel for the employee.

18 SEC. 2. Section 19635 of the Government Code is amended
19 to read:

20 19635. No adverse action shall be valid against any state
21 employee for any cause for discipline based on any civil service
22 law of this state, unless notice of the adverse action is served and
23 the investigation is completed within one year after *discovery of*
24 *the cause for discipline; upon which the notice is based, first arose.*
25 *Adverse action based on fraud, embezzlement, or the falsification*
26 *of records shall be valid if notice of the adverse action is served*
27 *within one year after the discovery of the fraud, embezzlement, or*
28 *falsification.*